

Dear Jim,

5/8/74

Something, perhaps more than 40 years of dissolution, is catching up with me. I fall asleep sitting up, stay a little fuzzy, etc. And I guess I was more than usually tired when you phoned today from getting a very early start and a long walk with Howard after breakfast. As you know, I had not yet read Gessell's decision when you phoned. It had just come. And I phoned you as soon as I read it once.

But it stayed on my mind. It is quite a disturbing thing for a judge with his reputation and the pretensions attributed to him to be so anti-judicial.

This may reach you too late to be considered in whatever you will file, but I do have added thoughts, some extensions of questions I raised verbally. Like this, relating to his and the government's and his permitting the government to ignore the fact that Ford sold precisely that which he has refused me and asserted a copyright on it. His decision therefore has the completely illegal effect of granting Ford an exclusive copyright on what he has denied to me and the basis of the denial to me makes Ford guilty of a criminal act with which he has not been charged. Judges have responsibilities, too, and the most common way in which they exercise those that here I think are relevant are by charging contempt. He has ruled that Ford violated the law and he has done nothing. Would he have done nothing if a man of a different station, say me, had done the same thing? No punishment? Exclusive copyright? Equal justice under the law? If I had stolen this and the government had made complaint when I used it he would have ignored their charge? Do you think he should be confronted with this? If so, would he react against you? I am willing to file an affidavit of prejudice, as I told you earlier, but there now is not enough time. I think this is one of the evidences of prejudice and of unequal justice. More so when Ford swore falsely about it also with impunity.

He did ask for evidence on Exemption 1 and in this decision he says he found it necessary. But in the absence of any evidence on Exemption 7 he failed to ask for it. This can mean only that he had made his mind up in the absence of evidence, which means pre-existing prejudice. Yet on this the law is clear. The requirement is on the government and there is no affidavit. He therefore quoted no evidence as evidence. A baby-doctor's Danaher.

I think your Memo's exhibit on the Commission's own policy statement with regard to its working papers is quite relevant to anything you file.

When on page 7 (and this also just reached me today) you say as I had suggested, that when you asked for the relevant Warren letter and were told to file for discovery or to file another FOI suit, I think you should address this differently now and in my name or jointly. They said and he agreed to their holding from the court what was essential evidence in any proceeding and vital to any decision. (Here I would like to know the date on which you filed the memo and the date of his decision in comparison. His decision was open dated. That is, it was typed May blank and he then wrote in May 3. This is indicative of his having decided in advance, I think. The typing time for his decision was an easy hour and required no blank for the date. In this he has also given judicial sanction to the deliberate withholding of evidence that should have been considered by him. I think that filing in my name, regardless of which judge gets it, if it is our way gives me an airtight suit for money damages against every government lawyer who figured in the case. And I think this is the kind of approach giving the law any prospect of viability requires. You have known this for several years. It is now clear I was right. I wanted Bud to do it with 718-70 and with spectro. This is also relevant to your inclusion of the argument I made that they had the affirmative obligation to make the review imposed by law and regulation (your page 8). Failure was, I think, a tortious act beginning with my first request and certainly after the 1970 review and my appeal. And he should have recognized this because they were without response to you or to me about it. (Yourly at the bottom is unfortunate in being limited to Ex. 1, the only ostensible question, so not your fault, but the argument is no less true of 7.) But is this decision therefore in violation of the FRCP? (Adickes, p. 9, seems super-relevant.)

And now I have just heard on radio of his Ellsberg position, that the President had the legal and constitutional right to order crimes for which the criminals can't be held to account. Wow! Lay on, MacLesar! And the devil take....

Best,

Your memoirs & cabinet